IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

TUESDAY, THE 6TH MARCH 2007 / 15TH PHALGUNA 1928

LA.App..No. 703 of 2006()

LAR.45/2001 OF SUB COURT, CHERTHALA

APPELLANT: 2ND RESPONDENT

THE MANAGING DIRECTOR,
KERALA STATE INDUSTRIAL DEVELOPMENT CORPORATION,
THIRUVANANTHAPURAM.

BY ADV. SRI.V.JAYAPRADEEP, SC, KSIDC

RESPONDENTS: CLAIMANTS:

1. NANIAMMA LAKSHMIKKUTYAMMA,
PUTHAZHATHUKATTIL, THEKKE VELIYIL,
PALLIPPURAM.

2. SATHIDEVI -DO-.

3. VIJAYAMMA, -DO-.

4. BABY, -DO-.

5. KERALA STATE REPRESENTED BY
THE SPL.TAHSILDAR (LA), INDUSTRIAL GROWTH CENTRE,
CHERTHALA.

R1 TO R4 BY ADV. SRI.G.D.PANICKER
SMT.JEENA JOSEPH
R5 BY GOVERNMENT PLEADER SRI.MANOJ

THIS LAND ACQUISITION APPEAL HAVING BEEN FINALLY HEARD ON 06/03/2007, ALONG WITH LAA NO.704 OF 2006 , LAA NO. 705 OF 2006 AND LAA NO. 706 OF 2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.T. SANKARAN, J.

L.A.A. NOS.703. 704, 705 & 706 OF 2006

Dated this the 6th day of March, 2007

JUDGMENT

These appeals arise out of the common judgment dated 30.6.2006 in L.A.R.Nos.28 of 2001, 29 of 2001, 30 of 2001 and 45 of 2001. L.A.R.Nos.29, 30 and 45 of 2001 were originally disposed of on 31.10.2002. The requisitioning authority filed Writ Petition No.23763 of 2003 challenging the judgment on the ground that the requisitioning authority was not made a party to the proceedings. Writ Petition No.23763 of 2003 was allowed on 5.11.2003 and the cases were remanded. After remand, the Reference Court disposed of those three reference cases by a common judgment dated 13.1.2004. The requisitioning authority challenged the same in L.A.A.No.725 of 2004, which was disposed of on 14.2.2005 and the cases were remanded to the Reference Court. L.A.R.No.28 of 2001 was disposed of by the judgment dated 14.1.2001. The requisitioning authority was not a party to the proceedings. W.P.(C) No.25244

of 2003 was filed by the requisitioning authority challenging the judgment in L.A.R.No.28 of 2001. The Writ Petition was allowed and the requisitioning authority was directed to be impleaded in the proceedings. Thereafter, all the aforesaid four reference cases were tried together by the Reference Court and a common judgment dated 30.6.2006 was passed, which is under challenge in these Land Acquisition Appeals.

2. In all these cases, notification under Section 4(1) was issued on 24.1.1997 and award was passed on 16.9.2000. The Land Acquisition Officer awarded land value at the rate of Rs.7,876/- per Are. The extent of lands acquired in L.A.R.Nos.28, 29, 30 and 45 of 2001 are respectively 5.26 Ares, 4.05 Ares, 1.21 Ares and 4.05 Ares. Before the Reference Court, the claimants in L.A.R.Nos.29, 30 and 45 of 2001 claimed land value at the rate of Rs.30,000/- per cent, while the claimant in L.A.R.No.28 of 2001 claimed land value at Rs.25,000/- per cent. The Reference Court enhanced the

land value at Rs.7,000/- per cent (Rs.17,297/- per Are).

3. Before the Reference Court, on behalf of the claimants, AWs.1 and 2 were examined and Ext.A1 was marked. RW1 was examined on the side of the respondents in the Land Acquisition References and Exts.R1 to R7 were marked. A Commissioner was appointed by the Reference Court who submitted Ext.X1 report and Ext.X1(a) sketch. The Land Acquisition Officer fixed the land value at Rs.7,876/- per Are, on the basis of Ext.R5 sale deed dated 9.5.1995 whereunder an extent of 62 cents of land was sold for a consideration of Rs.1,79,800/-. The claimants, on the other hand, relied on Ext.A1 assignment deed dated 23.12.1997, executed by AW2 Cicily Chacko in favour of St.Thomas Hospital, Pallippuram. An extent of 10.75 cents of land was sold for a consideration of Rs.2,68,750/- as per Ext.A1. The land value under Ext.A1 is Rs.27,000/- per cent.

4. The Land Acquisition Court held that Ext.R5 basis document dated 9.5.1995 cannot be relied on to arrive at the correct land value of the acquired land for the following reasons: (a) Ext.R5 land is a barren land whereas the acquired properties are fertile garden lands. (b) Ext.R5 property is far away from the acquired land, Ext.R5 being included in Sy.No.72/12 and acquired property in Sy.No.188. (c) Ext.R5 land is lying at a lower level. (d) Ext.R5 property is lying at a distance of 2485 metres from Pallichandha junction whereas the acquired properties are lying at a distance of only 675 metres from Pallichandha junction. (e) The acquired properties are situated in a more important locality than the property covered by Ext.R5 and the land value in Ext.R5 cannot be made a basis for fixing the land value for the acquired land.

5. The court below considered the suitability of adopting the value as shown in Ext.A1 with reference to the documentary and oral evidence in the case and held that though Ext.A1 is a post notification document, it

can be relied on to the limited extent of finding that the land value fixed by the Land Acquisition Officer is low. As stated above, the land value in Ext.A1 is Rs.25,000/- per cent while the Land Acquisition Court has granted only Rs.7,000/- per cent for the acquired land as enhanced land value. The extent involved in Ext.A1 document is 10.51 cents. That property was purchased by St.Thomas Hospital for annexing the same to the property belonging to the hospital. Therefore, the court below held that the value as shown in Ext.A1 cannot be taken as a criterion for fixing the land value for the acquired land. Moreover, Ext.A1 property is having road frontage while the acquired land does not have public road frontage. The court below found that Ext.A1 property is more valuable than the acquired land.

6. The court below considered the question whether a post-notification document can be relied on in the matter of fixing the land value for the acquired land. Relying on the decisions in **Jacob** v. **State of**

Kerala (1997 (2) KLT 872) and **State of Kerala** v. **Dr.Susheela Varghese and others** (1999(2) K.L.J. 594), the court below held that there is no bar in the Court considering a post-notification document while fixing the land value. The learned counsel for the appellant relied on the decisions in **K.Posayya and others** v. **Special Tahsildar** ((1995) 5 SCC 233); **K.Padmaraju alias Padmanabha Raju and others** v. **Senior Regional Manager, F.C.I., Hyderabad and others** ((1996) 10 SCC 613); **Karan Singh and others etc. etc.** v. **Union of India** (JT 1997 (8) S.C.257); **Delhi Development Authority** v. **Ball Ram Sharma and others** (JT 2004 (6) SC 422) and **Special Land Acquisition Officer** v. **Indian Standard Metal Co. Ltd.** (JT 2004 (8) SC 376). The learned counsel for the respondents/claimants relied on the decisions in **Chimanlal Hargovinddas** v. **Special Land Acquisition Officer, Poona and another** (AIR 1988 SC 1652) and **Mehta Ravindrarai Ajitrai** v. **State of Gujarat** (AIR 1989 SC 2051) to substantiate the contention that post-notification document can also be relied on.

7. In **(1995) 5 SCC 233** (supra) it was held that stray sale deeds of small extent of land cannot be applied to large tract of lands for projects. It was held that the Reference Court should be circumspect, pragmatic and careful in analysing the evidence and arriving at just and fair market value of the lands under acquisition which could be fetched on the date of the notification. The owner or claimant should not be put to loss by undervaluation. But, at the same time public exchequer should not be put to undue burden by excess valuation. It is the statutory duty of the court to maintain the balance between diverse interests. In Posayya's case, the Supreme Court held thus:

> ".. The acid test is the arm chair of the willing vendor would offer and a prudent willing buyer, taking all relevant prevailing conditions of the normal market, fertility of the land, location, suitability of the purpose for which it was purchased, its existing potentialities and likely use to which the land is capable of being put in the same condition would, offer to pay the price, as on the date of the notification.."

It was also held that the nature of the land, the crops

raised and the nature of the income likely to be derived from the lands, the expenditure to be incurred for raising the crops and the net profits etc. would be the relevant factors in arriving at the net market value.

8. In **JT 2004 (8) SC 376** (supra), the Supreme Court held that the value shown for small piece of land cannot be taken as a criterion for fixing the land value for large extent of lands acquired. In **1999 (2) K.L.J. 594** (supra), it was held that in the absence of any transaction or sale of land on the date of notification, courts would be justified in relying upon transactions of sale nearer to the date of notification. In order to rely on a post-notification document, the claimant has to prove that there was no upward increase in the price of the land in the locality and that the price was remaining static during the intervening period. This burden has to be discharged by the claimant by adducing reliable evidence. In **1997(2) KLT 872** (supra), a Division Bench

of this Court took the view that there is no inflexible Rule that post-notification document cannot be looked into to ascertain the market value. Therefore, the test to be applied in such cases is to find out whether after the publication of the notification, the price of the lands in the locality has increased which has to be determined on the facts proved in the case.

9. In **(1996) 10 SCC 613** (supra), the Supreme Court reiterated that in the matter of acquisition of large extent of land, sale deeds in respect of small extent of land are not relevant in fixing the market value. In **JT 1997(8) SC 257** (supra), it was held that a post-notification document can guide the Court in fixing the market value under certain conditions, but claimant has to prove that there was no rise in price after the notification. It was held that the burden is upon the claimant to prove that the price of the land remained static and there was no upward rise in the price of the land during the period of issue of notification under Section 4 of the Act and the date of

transaction of sale. Karan Singh's case (JT 1997 (8) SC 257) was followed in JT 2004 (6) SC 422 (supra).

10. In **AIR 1988 SC 1652** (supra), the Supreme Court laid down the factors to be taken note of while fixing the market value of the land. It was held that the most comparable instances out of the genuine instances have to be identified on the consideration of proximity from time angle and proximity from situation angle. Having identified the instances which provide the index of market value the price reflected may be taken as the norm and the market value of the land under acquisition may be deduced by making suitable adjustments for the plus and minus factors vis-a-vis land under acquisition by placing the two in juxtaposition. A balance sheet of plus and minus factors may be drawn for this purpose and the relevant factors may be evaluated in terms of price variation as a prudent purchaser would do.

11. In **AIR 1989 SC 2051** (supra), it was held that

where the sale of land adjacent to the acquired land was cited as instance for determination of market value, the same could not be altogether ignored merely because it was a post-acquisition sale when there was no evidence indicating that there was sharp or speculative rise of the land after acquisition.

12. It is clear from Ext.R5 (basis document) and Ext.A1 (post notification document) that in between 9.5.1995 and 23.12.1997, the dates of execution of those documents, there was increase in land value in the locality. I am of the view that the fact of increase in price of land in the locality can be taken note of while fixing the land value in respect of the land acquired, if there is considerable lapse of time between the date of basis document and the date of Section 4(1) notification. When it is proved that there was a steady increase in the land value, the same yardstick must be applied while considering a pre-notification basis document relied on by the land acquisition officer and a post notification document

relied on by the claimant-landowner. The same reasoning in not accepting a post-notification document on the ground that there was rise in price after notification must also apply to the rejection of a basis document where it is shown that there was upward increase in the value of lands after the date of basis document and before the issue of Section 4(1) notification. From the evidence available in the case it can be sufficiently concluded that the land value was shooting up not only after the notification under Section 4(1) but even before that. Therefore, the court below was justified in holding that the value shown in Ext.R5 dated 9.5.1995 cannot be accepted as the value of the land which was acquired as per notification dated 24.1.1997. At the same time, the court below was justified in not relying on the value shown in Ext.A1 assignment deed. The court below was right in taking note of the value in Ext.R5 and Ext.A1 and in deducting 2/3 of the value shown in Ext.A1 to arrive at the value of the land acquired. The land value fixed by the Land Acquisition Court at Rs.7,000/-

per cent (Rs,17,297/- per Are) cannot be held to be excessive. The court below took note of the advantages and potentialities of the acquired properties as well as that of Ext.A1 property and Ext.R5 basis land and after considering all the relevant aspects and materials, arrived at the conclusion that the reasonable price for the acquired land would be Rs.7,000/- per cent. I concur with the reasonings and conclusions of the court below.

No grounds are made out for interference in the appeals. The appeals lack merit and they are accordingly dismissed.

(K.T.SANKARAN)
Judge

ahz/

K.T.SANKARAN, J.

L.A.A.NOs.703,704,705 & 706 OF 2006

JUDGMENT

6th March, 2007